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21 Pacific Indemnity Company, and
22 Westchester Fire Insurance Company as successor
23 in interest to Industrial Underwriters Insurance
24 Company for policies JU835-8355 and JU895-0964*

25 *(additional counsel for insurers listed on signature page)*

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16
UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

In re:

The Roman Catholic Archbishop of San
Francisco,

Debtor and
Debtor in Possession.

Case No. 23-30564

Chapter 11

Hon. Dennis Montali

**LIMITED OBJECTION AND
RESERVATION OF RIGHTS OF
CERTAIN INSURERS REGARDING
DEBTOR'S BAR DATE MOTION**

Date: November 9, 2023
Time: 1:30 p.m.
Place: via ZoomGov

1 The insurers listed in the signature block below (collectively, the “**Insurers**”) hereby
2 submit this limited objection and reservation of rights regarding the *Debtor’s Motion for Order (1)*
3 *Fixing Time for Filing Proofs of Claim; (2) Approving Proof of Claim Forms; (3) Providing*
4 *Confidential Protocols; and (4) Approving Form and Manner of Notice* [Docket No. 220] (the
5 **“Bar Date Motion”**).¹

6 The Insurers generally support the relief sought in the Bar Date Motion (as modified
7 herein) and agree that establishing a final date by which abuse claims against the Debtor must be
8 duly filed is essential to providing meaningful information and data points to ensure an efficient
9 and effective plan process (Bar Date Motion at 6:9–10). However, the Insurers file this limited
10 objection and reservation of rights to request that the Court require (or at a minimum, encourage)
11 claimants to complete the Confidential Survivor Supplement, establish a deadline for doing so,
12 approve modest revisions to the Supplement, and modify the proposed Confidentiality Protocol to
13 ensure that it is administratively feasible for Insurers and other parties-in-interest, as detailed
14 below. In addition, the Insurers reserve all rights, including the right to dispute, in the appropriate
15 forum, the validity and amount of any claims (individually or in the aggregate) that are filed or
16 allowed in this case and the reasonableness of any claimed loss and coverage for any such claimed
17 loss.

18 **I. The Proof of Claim Form is Insufficient Without the Information Required by the**
19 **Confidential Survivor Supplement**

20 Bankruptcy courts have recognized that, in appropriate cases, claimants may be required
21 to supplement information required by Official Form 410 including by completing questionnaires
22 in order to substantiate their claims, to ensure that all claims are treated equitably, and to avoid the
23 risk of inflated or double recovery. *See, e.g., In re A.H. Robins Co.*, 862 F.2d 1092, 1095 (4th Cir.
24

25 ¹ The Insurers submitting this limited objection and reservation of rights are: Century Indemnity
26 Company, as successor to CCI Insurance Company, as successor to Insurance Company of North
27 America, Pacific Indemnity Company, Westchester Fire Insurance Company as successor in
28 interest to Industrial Underwriters Insurance Company for policies JU835-8355 and JU895-0964,
Certain Underwriters at Lloyd’s, London and Certain London Market Companies, Continental
Casualty Company, Westport Insurance Corporation, formerly known as Employers Reinsurance
Corporation, Chicago Insurance Company, Fireman’s Fund Insurance Company, First State
Insurance Company, and Appalachian Insurance Company.

1 1988) (authorizing use of a detailed questionnaire as part of the mandatory proof of claim form);
2 *In re I.G. Servs., Ltd.*, 244 B.R. 377, 384 (Bankr. W.D. Tex. 2000) (citing *A.H. Robins* and noting
3 that proof of claim forms which deviate from the Official Proof of Claim Form 10 may be used
4 when appropriate); *see also In re Donnadio*, 608 B.R. 507, 513 (B.A.P. 6th Cir. 2019); *In re*
5 *Gianulias*, WL 1397430, at *2 n.4 (B.A.P. 9th Cir. Apr. 5, 2013); *In re Twisselman*, 2012 WL
6 8249605, at *4 (Bankr. E.D. Cal. Aug. 23, 2012). This is especially important where, as here, the
7 claims at issue are contingent tort claims (for which the form was patently not designed) that are
8 unliquidated and likely disputed. *A.H. Robins Co.*, 862 F.2d at 1095.²

9 Other bankruptcy courts administering diocesan or other abuse cases have approved
10 language in their respective abuse proof of claim forms that require claimants to provide
11 information included here in the Confidential Survivor Supplement. *See, e.g., In re Madison*
12 *Square Boys & Girls Club, Inc.*, No. 22-10910, Docket No. 126 at 40 (Bankr. S.D.N.Y. Aug. 12,
13 2022) (requiring response as to whether debtor-employer knew or should have known about the
14 abuse); *In re Roman Catholic Diocese of Harrisburg*, No. 20-00599, Docket Nos. 223-2, 291
15 (Bankr. M.D. Pa. Apr. 3, 2020) (approving proof of claim form asking, *inter alia*, about diocese's
16 knowledge of abuse); *In re Diocese of New Ulm*, Case No. 17-30601, Docket No. 33 (Bankr. D.
17 Minn. Mar. 8, 2017) (same); *In re Diocese of Duluth*, Case No. 15-50792, Docket No. 35 (Bankr.
18 D. Minn. Jan. 7, 2016) (same); *In re Archdiocese of St. Paul & Minneapolis*, No. 15-30125, Docket
19 No. 188, Ex. A (Bankr. D. Minn. Apr. 17, 2015) (same).

20 The practical realities of this and similar abuse-related chapter 11 cases counsel in favor of
21 the Court requiring (or at a minimum, encouraging) claimants to complete the Confidential
22 Survivor Supplement in order to avoid an influx of facially meritless claims that would risk
23 warping the plan negotiation process and dilute the recovery of legitimate claimants. An industry

25 ² *In re Heath* does not require a different result. 331 B.R. 424 (B.A.P. 9th Cir. 2005). *Heath*
26 held that a debtor could not disallow a claim on purely technical grounds for failure to file
27 supporting documentation. *Id.* at 434–35. The *Heath* court agreed that to the extent substantive
28 information necessary to support the claim is missing and not provided upon subsequent request
or demand, that is a valid basis for disallowance. *Id.* at 436. And given the anticipated volume of
proofs of claim in this case, judicial economy and efficiency for all parties counsel in favor of
mandating the inclusion of such information now.

1 of non-lawyer businesses (claims aggregators) has arisen that solicit and generate proofs of claim,
2 often of dubious validity, in mass tort bankruptcy cases. Claim aggregators advertise heavily on
3 traditional and social media, and non-lawyers take calls from putative claimants and prepare proofs
4 of claims on their behalf. It is a business focused on quantity, not quality, and the role of a signing
5 attorney in preparing and verifying the proof of claim can be murky, at best, in practice. See Sara
6 Randazzo and Jacob Bunge, *Inside the Mass-Tort Machine That Powers Thousands of Roundup*
7 *Lawsuits*, Wall St. J., Nov. 25, 2019 (available at <https://www.wsj.com/articles/inside-the-mass-tort-machine-that-powers-thousands-of-roundup-lawsuits-11574700480>) (describing how “lead-
8 generation” companies screen respondents to TV and social media ads, after which they either
9 send potential plaintiffs contracts for whatever law firm has hired them, or “sell the leads to law
10 firms”, sometimes using brokers). “The problem of over claiming inheres in any move from a tort
11 system predicated on individualized proof toward a streamlined administrative regime.” Richard
12 A. Nagreda, *Mass Torts in a World of Settlement* 150 (2007); see *In re Silica Products Liability*
13 *Litig.*, 398 F. Supp. 2d 563, 571–72 (S.D. Tex. 2005); *In re Joint E. & S. Dists. Asbestos Litig.*,
14 237 F. Supp. 2d 297, 314–16 (E.D.N.Y. 2002) (influx of questionable claims required court to
15 redesign claims process).

16
17 The Debtor’s proposed Confidential Survivor Supplement asks for information that is
18 essential to determining whether the claimant has a potential claim with even *prima facie* validity.
19 First, under the California Child Victims Act (CVA), a complaint must have been filed during the
20 3-year window between January 1, 2020 and December 31, 2022 unless the plaintiff is under 40
21 years of age. Cal. Code of Civ. Proc. § 340.1(q). And all claims by plaintiffs over the age of 40
22 must include certificates of merit signed by the plaintiff’s attorney and a licensed mental health
23 practitioner meeting certain requirements. *Id.* § 340.1(f)–(k). Failure to file such certificates is
24 grounds for dismissal. *Id.* § 340.1(k). Though there may be additional grounds to dispute the
25 validity and amount of claims, the Confidential Survivor Supplement asks about these essential
26 elements to the claim since claims that have not been filed within the statutory period or without
27 the requisite certification of merit are clearly non-compensable. The Confidential Survivor Proof
28 of Claim Form does not require such disclosures.

1 Second, in order to successfully pursue a claim against Debtor—vicariously as an
2 employer—a plaintiff must prove that the Debtor had prior notice of the abuser’s propensity to
3 commit abuse, in order to render the Debtor potentially liable for negligent supervision and/or
4 retention. *See Ferguson v. Horizon Lines, Inc.*, 602 F. App’x 664, 666 (9th Cir. 2015) (affirming
5 summary judgment where plaintiff adduced no evidence from which a jury could find that
6 defendant knew or should have known that employee posed a danger to others). Although this
7 information can be obtained through the Confidential Survivor Supplement (with a modest
8 addition as described below), the Confidential Survivor Proof of Claim Form does not require
9 disclosure of any information to evaluate whether the claimant can assert a claim against the
10 Debtor (as opposed to an individual perpetrator) based on its status as employer.

11 Because the Confidential Survivor Proof of Claim Form does not ask for this basic
12 information that is necessary for the claimant to state a *prima facie* claim, it does not serve the
13 purposes of this case. Requiring (or at a minimum, encouraging) the completion of the
14 Confidential Survivor Supplement will ensure that all information that is submitted is based upon
15 personal knowledge of the claimant, without which the proof of claim carries no evidentiary
16 weight. Unless creditors are required to provide basic disclosure of information covering the
17 essential elements of a claim, the process will invite assertion of meritless claims, fatally distorting
18 the claims allowance and plan negotiation/solicitation process or, at a minimum, leading to the
19 need for additional information and discovery from numerous purported claimants. *See In re*
20 *Diocese of Camden*, 653 B.R. 309, 362 (Bankr. D.N.J. 2023) (“The Court cannot approve a Plan
21 which allows attorneys to file invalid and fraudulent claims without consequence.”); *see also In re*
22 *Roman Catholic Diocese of Rockville Centre*, 651 B.R. 146, 152–53 (Bankr. S.D.N.Y. 2023)
23 (disallowing certain sexual abuse claims because the claimants had “not pled sufficient allegations
24 that the Debtor had notice of the alleged abuse”).

25 Debtor has foreshadowed that this case would proceed with “a global mediation with all
26 parties-in-interest, including the debtor, the committee, and insurance companies.” Hr’g Tr., Aug.
27 24, 2023 at 10:12–13. The Debtor has stated that its goal is to “do our part to be ready for that
28 mediation as early as possible. Then we go to the mediation and hopefully come out with a Chapter

1 11 plan.” *Id.* at 11:4–7. However, the Insurers cannot participate meaningfully in mediation
2 without the information necessary to assess the Debtor’s liability for each claim. The Insurers
3 have participated in numerous mediations that settled similar bankruptcy cases involving
4 assertions of sexual abuse tort claims against a diocese or other debtor facing similar claims. The
5 factual information sought in the Confidential Survivor Supplement is required to plead the
6 required elements under California law for negligent sexual abuse tort claims against an employer.
7 Without this information, the Debtor and/or Insurers must obtain answers individually, through
8 costly appropriate discovery, which would delay and hinder any meaningful settlement
9 discussions.

10 As the Debtor recognizes (Bar Date Motion at 8:1–10), completion of the Confidential
11 Survivor Supplement benefits the Debtor, the Insurers, and claimants by: (i) allowing the Debtor,
12 Committee and Insurers to evaluate claims and (ii) lessening the administrative burden on
13 claimants and potentially preventing claimants from having “to address later intrusive, expensive,
14 and time-consuming discovery concerning the scope and nature” of their claims.³

15 Specifically, Part 3 of the Confidential Survivor Supplement, with modest additions,
16 requests basic details about the allegations that are necessary to meet the claimant’s obligation “to
17 allege facts sufficient to support a legal liability to the claimant in the proof of claim.” *In re*
18 *MacGibbon*, Nos. WW–05–1411–DMcK, 05–15099, 2006 WL 6810964 (B.A.P. 9th Cir. Oct. 4,
19 2006) (citing *In re Holm*, 931 F.2d 620, 623 (9th Cir. 1991)). Although the Confidential Survivor
20 Supplement as originally proposed by the Debtor included certain questions relevant to whether
21 the claimants have alleged a basis to hold the Archdiocese (as opposed to an individual perpetrator)
22 liable as an employer, it no longer clearly does so, based on modifications the Debtor has advised
23 the Insurers that it may be amenable to making at the request of the U.S. Trustee.

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28 ³ Indeed, the Debtor “strongly encourages” claimants to complete the Confidential Survivor
Supplement. *Id.*

1 To ensure claimants provide this information, the following question should be added to
2 Part 3:

3 “Do you have personal knowledge or reason to believe that the Archdiocese knew or should
4 have known of the abuse? If so, describe how and when the Archdiocese learned of the
abuse and details concerning what the Archdiocese was told or observed.”

5
6 Part 4 of the Confidential Survivor Supplement seeks information about the impact of
7 abuse, which would be relevant to the monetary value for each claim. Part 5 of the Confidential
8 Survivor Supplement requests information about prior claims, settlements, releases, and/or
9 adjudications that are essential to evaluate liability and claimed damages, and to prevent payment
10 of a double recovery or payment for claims that were already released (which would serve to
11 reduce the money available for other claimants).⁴

12 Keeping the Confidential Survivor Supplement voluntary risks hamstringing the plan
13 negotiation process, as the parties will not have a fulsome understanding of the claims facing the
14 Debtor, and will likely lead to expensive and time-consuming discovery from claimants that could
15 be easily avoided by eliciting all information related to the claim at once. Although the requested
16 notice (as apparently may be revised to incorporate the U.S. Trustee’s comments) now includes
17 additional language intended to encourage claimants to complete the Confidential Survivor
18 Supplement, it remains entirely and explicitly optional. In addition, although the Debtor originally
19 included language to the effect that failure to submit a completed Supplement with a Proof of
20 Claim may be a basis for an objection to the claimants’ proof of claim, this language appears to
21 have been removed. Additionally, even as an entirely optional questionnaire, there is no requested
22 court-imposed deadline for its completion.

23 To remedy these concerns and to ensure that claimants provide sufficient information to
24 evaluate their claims, in addition to including the additional language above in Part 3, the Insurers
25 request that the Court require (or at a minimum, encourage) claimants to submit the Confidential
26

27 ⁴ Additionally (as described above), this information is needed to establish whether the claimant
28 filed a complaint during the January 1, 2020–December 31, 2022 revivor window—which is
required for many claimants to assert valid claims.

1 Survivor Supplement, and impose a deadline for completing the questionnaire along with notice
2 that failure to complete it may result in rejection of the claim.⁵

3 **II. The Confidentiality Protocol Should Be Modified to Expand and Clarify the**
4 **Categories of Entities That May Sign a Single Confidentiality Agreement on Behalf**
of All Employees

5 The Insurers also request that the Court modify the Order granting the Bar Date Motion
6 (the “**Bar Date Order**”, current proposed version at Docket No. 220-1) to modify the proposed
7 confidentiality protocols contained in paragraph 16 therein (the “**Confidentiality Protocols**”) to
8 clarify that a single Confidentiality Agreement may be signed by each entity that will cover the
9 entity, its employees, counsel, and experts, as well as administrative vendors providing support
10 services, to avoid placing an unnecessary administrative burden on Insurers and other parties-in-
11 interest.

12 As currently drafted, the Bar Date Order provides that “Counsel to the Debtor, each insurer,
13 Permitted Party (as defined below), and any successor third-party administrator of the Debtor’s
14 insurance programs, and counsel to the Committee shall only be required to execute a single
15 Confidentiality Agreement per firm.” (Bar Date Order, ¶ 16(c).) However, in prior diocesan
16 bankruptcy cases, claimants’ attorneys have taken the position that, notwithstanding similar
17 language in the applicable court order, *every single employee* at an insurer’s vendor who might see
18 a claimant’s name must individually sign a confidentiality agreement (including anyone who
19 processes a payment for a claimant and anyone in IT who may have to fix a computer system).
20 This burdensome requirement (on Insurers and potentially other parties-in-interest) goes well
21 beyond the intended scope of the proposed Confidentiality Protocols, and the Insurers do not agree
22

23 ⁵ Alternatively, the Court could add Questions 3(a), 3(e), 3(g), 3(h), 4(a), and 5(b)–(d) from the
24 Confidential Survivor Supplement to the Survivor Claim Form. Bankruptcy courts in jurisdictions
25 across the country overseeing mass tort cases have almost unanimously approved proof of claim
26 forms with modifications tailored to the needs of the cases, because requiring claimants (typically
27 in the hundreds or thousands) to provide detailed information relevant to the viability of their
28 contingent tort claims and determination of potential damages could assist in the efficient
resolution of the plan process. See, e.g., *In re Madison Square Boys & Girls Club, Inc.*, No.
22-10910, Docket No. 126 at 40 (Bankr. S.D.N.Y. Aug. 12, 2022); *In re Roman Catholic Diocese*
of Harrisburg, No. 20-00599, Docket Nos. 223-2, 291 (Bankr. M.D. Pa. Apr. 3, 2020); *In re*
Archdiocese of St. Paul & Minneapolis, No. 15-30125, Docket No. 188, Ex. A (Bankr. D. Minn.
Apr. 17, 2015).

1 that it is required by the language of the Bar Date Order as currently drafted. To confirm that the
2 Confidentiality Protocol does not require that unnecessary and burdensome step, the Insurers
3 propose the following change:

4 Paragraph 16(c) should be modified to read as follows (with removed language in red and
5 added language in blue):

6 (c) Survivor Proof of Claim Forms submitted by a Survivor
7 Claimant shall be held and treated as confidential by the Debtor and
8 Debtor's counsel and copies thereof shall be provided by the Debtor
or Debtor's counsel to the parties listed below (the "Permitted
9 Parties") and to such other persons that may be granted access to the
10 Survivor Proofs of Claim by order of the Court. No party (including
11 a Permitted Party) may obtain copies of Survivor Proofs of Claim
unless such party first executes a confidentiality agreement
12 substantially in the form attached hereto as Exhibit C (the
13 "Confidentiality Agreement"). Executed Confidentiality
14 Agreements shall be provided to counsel to the Debtor, insurers,
15 reinsurers of the Debtor, and any other third-party administrator of
16 the Debtor's insurance program, and counsel to the Committee.
17 Permitted Parties shall keep confidential and not disclose the
18 contents of any Survivor Claim Form except as otherwise provided
by the confidentiality provision herein or order of the court. ~~Counsel~~
~~to the Debtor, each insurer, Each~~ Permitted Party (as defined below)
~~identified in subparagraphs (d)(1)-(9) of this Paragraph 9 who is not~~
~~a natural person, and any successor third party administrator of the~~
~~Debtor's insurance programs, and counsel to the Committee~~ shall
only be required to execute a single Confidentiality Agreement per
firm or company.

19 Additionally, subparagraph 16(d)(4) should be modified to read as follows
20 (with added language in blue):

21 (d) The permitted Parties (the "Permitted Party List")
22 include:
23 . . .

24 (4) Any insurer for the Debtor, together with its
25 successors, administrators, retrocessionaires, reinsurers, reinsurance
26 intermediaries, and their counsel and other professionals, including
27 partners, counsel, associates, consultants, experts, and employees of
such professionals, and administrative vendors for, among other
things, processing payments of claims, providing IT support
services, and providing litigation support services.

1 The Insurers believe that the proposed language strikes a delicate balance between
2 protecting the privacy of abuse claimants while also avoiding an unnecessary administrative
3 burden upon the Insurers and other parties-in-interest.

4 **III. Reservation of Rights**

5 In all events, the Insurers reserve the rights to challenge the validity and amount of any
6 claims (individually or in the aggregate) that are filed or allowed in this case (whether by deemed
7 allowance, judicial determination, or agreement of the parties). This includes the right to object
8 to proofs of claim in this Court using the claims allowance process, *see* 11 U.S.C § 502(a) (any
9 party in interest may object to proofs of claim), and to dispute in coverage litigation the Insurers'
10 liability for claims paid and the reasonableness of any settlement reached using claims that are
11 filed or allowed in this case.

12 In a typical diocese chapter 11 case, the bar date is used to facilitate negotiation of a
13 consensual chapter 11 plan, establishing a trust to pay all claimants pursuant to a Trust Distribution
14 Plan or Allocation Protocol. The proofs of claim should have no collateral estoppel, waiver,
15 estoppel, *res judicata*, or other effect on the Insurers regarding any insurance coverage obligations
16 under the terms and conditions of the relevant insurance contracts. Nor should any findings of fact
17 or conclusions of law in the context of this chapter 11 case—based in whole or in part on such
18 allowance—constitute or be deemed to constitute a trial or hearing on the merits or an adjudication,
19 settlement or judgment of any individual or group of claims, nor shall it bind, nor accelerate the
20 obligations, if any, of, any insurer under its insurance policies or otherwise.

21 Pre-petition, the primary Insurers with duties to defend had been defending and
22 indemnifying the Debtor under a reservation of rights. The Insurers have no indemnity obligations
23 under the policies unless there is an actual trial or settlement entered into in accordance with policy
24 conditions requiring, among other things, that the insured cooperate, allow the insurers to associate
25 in the defense, and provide notice and claim information. To ensure that the policyholder
26 bankruptcy does not alter the insurers' state-law contract rights or obligations (which it could not
27 do, as bankruptcy cannot modify the terms of existing contracts), chapter 11 plans in other cases
28 have included "insurance neutrality" language making clear that allowance of claims is not binding

1 on third-party insurers and that neither such claims nor other bankruptcy court orders alter or
2 abridge any contractual rights or obligations.

3 The Insurers recognize that inclusion of similar insurance neutrality language could await
4 the plan confirmation process, but reserve all rights and defenses and nothing contained herein
5 should be construed as a waiver or admission as respects such rights and defenses.

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Respectfully submitted,

Dated: November 2, 2023

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